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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

STEVE DAVIS,

Plaintiff(s),

v.

THE LIVING TRUST OF MICHAEL J.  
FITZGERALD, HENRY W.  
RANSPOT,

Defendant(s).

2:12-CV-1939 JCM (PAL))

**ORDER**

Presently before the court is defendant Henry Ranspot's motion to dismiss complaint against him. (Doc. # 9). Defendant Ranspot's motion is filed pursuant to Fed. R. Civ. P. 8, 9, 12(b)(2) and 12(b)(6). To date, plaintiff Steve Davis has failed to file an opposition.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citing *Bell Atlantic*, 550 U.S. at 557). However, where there are well pled factual allegations, the court should assume their veracity and determine if they give rise to relief. *Id.* at 1950.

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1 Pursuant to Local Rule 7-2(d), an opposing party's failure to file a timely response to any  
2 motion constitutes the party's consent to the granting of the motion and is proper grounds for  
3 dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the  
4 district court is required to weigh several factors: "(1) the public's interest in expeditious resolution  
5 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;  
6 (4) the public policy favoring disposition of cases of their merits; and (5) the availability of less  
7 drastic sanctions." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*,  
8 779 F.2d 1421, 1423 (9th Cir. 1986)).

9 In light of plaintiff's failure to respond and weighing the factors identified in *Ghazali*, the  
10 court finds dismissal appropriate.

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Henry Ranspot's  
12 motion to dismiss complaint against him (doc. # 9) be, and the same hereby is, GRANTED.

13 The complaint is hereby dismissed without prejudice as to defendant Henry Ranspot.

14 DATED December 7, 2012.

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17 UNITED STATES DISTRICT JUDGE  
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